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COURT OF CLAIMS.

UNITED STATES.

BY

WILLIAM A. RICHARDSON, LL. D.,
CHIEF JUSTICE OF THE COURT.

SECOND EDITION.

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HISTORY, JURISDICTION, AND PRACTICE

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COURT OF CLAIMS.

(UNITED STATES.)

HISTORY.

Previous to the year eighteen hundred and fifty-four the accumulation of private claims against the Government of the United States presented to Congress for examination and relief had, at various times, engaged the attention of Senators and Representatives. It was seen and acknowledged by them all that it was beyond the power of Congress or its committees to make a thorough investigation of those claims, or to act intelligently upon the large and constantly increasing number of petitions introduced at each session in behalf of persons having claims of various kinds for which they sought relief. Claimants had gone to Congress, and would continue to go there, as a matter of right secured to them by the first article of the amendments to the Constitution of the United States, guaranteeing to the people the privilege to petition the Government for redress of grievances.

It was seriously felt both in and out of Congress that the constitutional guaranty was of little value, and was substantially violated if private claimants against the government were allowed merely the naked right to have their petitions presented, without any further investigation and consideration.

To neglect to hear petitioners, or not to act upon their complaints when heard, was practically the same to them as would be the effect of a law expressly abridging the right of petition in direct and flagrant violation of the Constitution.

The first edition of this article appeared in the March number of the Southern Law Review, A. D. 1882. The history is now brought down to A. D. 1885.

And yet such was the extent of these claims, and the difficulty of reaching the real facts in each case, that few of them were ever acted upon, and many honest creditors of the United States were turned away without a hearing, and others were deterred from presenting their petitions for redress by the difficulties in the way of ever reaching a final determination, while it was occasionally found that, upon hasty consideration or imperfect *ex-parte* evidence, a claim was allowed and paid which was, to say the least, of doubtful validity.

Committees could not constitute themselves courts for the trial of facts. They had not the time to devote to that kind of investigation, to the interruption or exclusion of their duties to the country on the great national questions which were always pending in Congress. They could not effectively examine the claimants' witnesses to any great extent before themselves, and they were not sufficiently familiar with the matters in controversy to be able to procure witnesses for the Government. Claimants, in fact, presented only *ex-parte* cases, supported by affidavits and the influence of such friends as they could induce to appear before the committees in open session, or to see the members in private. No counsel appeared to watch and defend the interest of the Government. Committees were, therefore, perplexed beyond measure with this class of business, and most frequently found it more convenient and more safe not to act at all upon those claims which called for much investigation, especially when the amounts involved seemed large. Moreover, when bills for relief in meritorious cases were reported, few of them were acted upon by either House, or, if passed by one, were not brought to a vote in the other House, and so fell at the final adjournment, and if ever revived, had to be begun again before a new Congress and a new committee, and so on year after year and Congress after Congress.

Several plans for relief were from time to time proposed by bills, resolutions, or motions, or were suggested by Senators and Representatives in the course of debate. But no measure was carefully and fully considered until the second session of the Thirty-third Congress, in the year eighteen hundred and fifty-four.

On the sixth of December of that year Senator BRODHEAD, of Pennsylvania, in pursuance of previous notice, asked and obtained leave to introduce a bill establishing a commission for the examination and adjustment of private claims, which was

read a first and second time by its title and referred to the Committee on Claims. This was a carefully drawn and well-prepared bill. It had evidently been considered by members of the committee and had their concurrence before its introduction, for it was soon reported back without amendment. When the bill came up for discussion in the Senate, it soon became apparent that the prevailing opinion of members was that something more was needed than a mere commission, with its members appointed for a term of years, or removable at the pleasure of the Executive. It was seen that there would be frequent changes of commissioners with the change of parties or the incoming of new administrations, and that with the constant liability of removal the independence of the commissioners would be greatly weakened and their usefulness much impaired. Besides, men of ability and learning in the law would not give up their position and practice to accept such semi-judicial offices, subject to removal at any time. The desire expressed was to have an independent and permanent tribunal, which should pass upon the claims made against the Government with all the formalities, safeguards, and judicial learning which distinguish courts of justice established for the trial of causes between individuals.

Senator HUNTER, of Virginia, suggested some amendments and proposed the appointment of judges with life tenure, instead of commissioners, as the best means of securing that complete independence which it was important to establish, and of obtaining the best men to fill the positions. He said:

"When these safeguards are provided, I think we should establish the most admirable tribunal for doing justice to private claimants, and, at the same time, for throwing proper checks about the Treasury of the United States, that could be established."

After this discussion the bill was referred on the 18th of December, 1854, to a select committee composed of Senators BRODHEAD, of Pennsylvania, JONES, of Tennessee, HUNTER, of Virginia, CLAYTON, of Delaware, and CLAY, of Alabama. On the 20th of December this committee reported a substitute entitled "An act to establish a Court for the investigation of claims against the United States." This bill differed from the former one very little, except in the important feature of establishing a permanent and independent court instead of a commission. The bill thus drawn met the approval of the Senate,

and on the 21st of December it passed that body, without a vote recorded against it.

The bill reached the House of Representatives on the 24th of December, and was referred first to the Judiciary Committee, but this reference was changed and it was sent to the Committee on Claims. It was soon reported back with some amendments which did not alter the main features of the bill, and was passed by the House on the 23d of February, 1855, by a vote of 150 to 46. Two days after, February 25, the bill was signed by the President and became a law.*

The act required the appointment of three judges by the President, by and with the advice and consent of the Senate, to hold their offices during good behavior. President PIERCE appointed two of them on the 3d of March, and the other on the 8th of May, 1855. They organized on the 11th of May, 1855, making choice of Judge GILCHRIST as Presiding Judge, and immediately entered upon the discharge of their duties.

The magnitude and difficulties of the business of the court, with its peculiar jurisdiction, are well presented in a report made to Congress by Judge GILCHRIST, for himself and his associates, bearing date June 23, 1856, from which the following extracts are taken:

"As to the business of the court, we are convinced that no one who has not had personal experience on the subject can have any correct idea of its diversity, its intricacy, its perplexity, the exhausting labor necessary for its investigation, or the large sum of money it involves. Until the institution of this court, there had never been anything like a systematic inquiry into the modes of action by the Government through the Executive Departments, or the relation in regard to contracts and the liabilities arising therefrom which the Government bore to the citizens. It was inevitable, and it is astonishing that it should not have been sooner perceived, that among twenty-five millions of people, inhabiting the almost boundless territory comprehended by the Union, innumerable questions of the most difficult and delicate nature must have arisen, delays in the decision of which were alike discreditable to the moral sense of the people and the public faith of the Government, of which the people were the foundation. It has been often asserted, and proved by the experience of the British Parliament, that legislative bodies are unfitted, by the pressure of great public in-

* 10 Stat. L., 612.

terests, from careful judicial investigation into private rights. The consequence has been in our country that claims accumulated until their magnitude repressed all willingness to investigate them, and a state of things arose which made it hopeless almost to present a claim against the United States with any prospect of a decision. Such was the condition of affairs when we entered upon the discharge of our duties. Our field of action was entirely new. We had no precedents to guide us. It was necessary at once to adopt some system of rules for the transaction of business. The ordinary rules of practice in courts of law were obviously inapplicable. We were forced to adopt rules in advance of any experience upon the subject, conscious that we should be forced often to modify and sometimes to abrogate them. We found numerous cases involving questions entirely out of the path of ordinary legal investigation, requiring a degree of care and study rarely necessary in courts of justice. Cases of contracts, intricate in their details, imperfectly defined by the evidence, reducible with difficulty to any legal principles, and enormous in amount, met us at the threshold. Cases involving the proper construction of treaties, important questions of public law, and that most difficult and delicate of all questions, the responsibility of the United States to their citizens, were laid before us. The construction of acts of Congress, the legitimate powers of the Executive Departments, the duties and liabilities of Government officers, the constitutional powers of the General Government, the duties of neutral nations, and questions arising out of a state of war, were all, directly or incidentally, to be inquired into. It cannot be presumed that, with a due regard to our own reputation or to our official oaths, we were disposed to pass lightly upon questions of such momentous importance. Our object has been to give each case such a degree of care and patient attention as would enable us to use it as a precedent in subsequent cases of a like character. Our desire has been, not to get rid of the cases, but to decide them; and in order to do that they must be carefully examined."

The original act provided that at the commencement of each session of Congress, and at the commencement of each month during the session, the court should report the cases upon which they had finally acted, stating in each the material facts which they found established by the evidence, with their opinion in the case, and the reasons upon which such opinion

was founded, and the opinion of any judge who should dissent from the majority. It also directed the court to prepare a bill or bills in those cases which received the favorable decision thereof in such form as, if enacted, would carry the same into effect. These provisions might perhaps have accomplished the desired result, and have proved satisfactory, had they not been accompanied with others which delayed and embarrassed the proceedings thereon in Congress, and, to a large extent, actually prevented any final action whatever. It required the court to transmit, with the reports, the briefs of the solicitor for the Government and of the claimant, and the testimony in each case.

The claims reported upon adversely were, by the terms of the act, to be placed on the calendar; and all reports and bills from the court were to be continued from session to session, and from Congress to Congress, until finally acted upon. But claims reported favorably upon, and the accompanying bills, were not required to be placed upon the calendar. At the very outset, when the first report came in, the question arose as to what was to be done with the favorable reports and bills. It was decided to refer them to the Committee on Claims, and that course was ever after followed while the system of reporting to Congress continued.

The Committee on Claims finding a mass of evidence, with the briefs in each case, referred to them, very naturally felt it to be their duty to go carefully over the whole matter, to read all the evidence, and examine the briefs of the claimant and of the solicitor for the Government. Claimants were uneasy and pressing, and the troubles and perplexities of the members of the committee were numerous. To hear the cases anew, or to examine all the papers in each case and submit the questions which were raised on the facts and the law to the decision of the committee, would require more time and labor of the members than it was possible to devote to such duty. If the work which the court had done was thus to be all gone over again in committee, little was gained by reference to the court at all. In fact it was a positive loss and injury to the claimants, because they were forced to try their cases twice, while neither Congress nor claimants obtained relief. Favorable reports were often not concurred in or not acted upon at all, and were finally lost altogether.

This was not what the friends of the act establishing the

court intended, nor what they hoped and expected to accomplish. In discussing the original bill in the Senate in December, 1854, Senator HUNTER, of Virginia, had said: "I take it for granted that there would scarcely be a case in which Congress would not concur in the decision of a court thus established." It was no doubt supposed, as was said at a later date by a member of the House from Pennsylvania, that the bills reported by the court would be read over by the committee simply to "see whether there was anything contained in them which might be considered as trenching on the privileges or rights of the House, and if there were not, that they might be reported back for the House to act on them."

It was not foreseen that the committee would feel reluctant to take the responsibility of reporting back the bills without examination of the evidence upon which they were founded, evidence which the law required should be submitted to Congress, and which had been referred to them by vote of the House. Such was the inevitable consequence of laying the whole record in each case before Congress, and it defeated one great object of the act establishing the court, that of relieving Congress from the consideration of private claims upon the evidence. When this became apparent from actual experience, Congress, ever ready as it has been to sustain and increase the usefulness of the court, made important and radical changes and improvements in the organic act.

On the 3d of March, 1863, an amendatory act was passed,* of which the most material alterations were these:

Two additional judges were added to the court, making the number five. An appeal was allowed to the Supreme Court by either party where the amount should exceed three thousand dollars, and by the defendants in other cases. Every judgment was to be paid "out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or in his absence by the presiding judge." Interest was to be allowed upon judgments in certain cases in favor of claimants, when on appeal to the Supreme Court the same should be affirmed. The former requirement that the court should send to Congress the records, evidence, judgments, and bills was done away with.

* 12 Stat. L., 765.

These provisions still stand as the existing law.*

Some other amendments were made by the act relating to jurisdiction which we shall refer to hereafter, and others in relation to details of less consequence.

The last section of the act led to some difficulty. It provided that no money should be paid out of the Treasury for any claim passed upon by the court till after an appropriation therefor should be estimated for by the Secretary of the Treasury. The Supreme Court held that this authority given to the head of an Executive Department, by necessary implication, to revise the decision of the Court of Claims requiring the payment of money, denied to it the judicial power from the exercise of which appeals could be taken to that court, and they refused to take jurisdiction of any appeals from the Court of Claims.†

When that decision was promulgated, Congress, in March, 1866, repealed the section referred to,‡ and the Supreme Court has ever since entertained jurisdiction of such appeals.

From that time the business of the court has gone on smoothly, with no other difficulties than those incident to the trial and investigation of cases of such magnitude, and involving such intricate and peculiar questions as come before this court.

The Supreme Court has held that the Court of Claims exercises all the functions of a court, and is one of those courts which Congress authorizes under the Constitution, having jurisdiction of contracts between the Government and the citizen, from which appeal lies to the Supreme Court; and that its judgments, where no appeal is taken, are absolutely conclusive of the rights of the parties, just as conclusive as are the judgments of the Supreme Court.§

It is held by the Supreme Court that the provisions authorizing the Court of Claims to give judgment in favor of the United States against claimants without a trial by jury do not violate either the letter or spirit of the seventh amendment to the Constitution, which provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." The court further say that: "Suits against the Government in the Court

* Revised Statutes, §§ 1059–1091.

† *Gordon* v. *United States*, 7 C. Cls.

‡ 14 Stat. L, 9.

§ *Klein's Case*, 7 C. Cls. R., 241, and 13 Wall., 128; *O'Grady's Case*, 10 C. Cls. R., 134, and 22 Wall., 641.

of Claims, whether reference be had to the claimant's demand or to the defense, or to any set-off or counter-claim which the Government may assert, are not controlled by the seventh amendment. They are not suits at common law within the true meaning."*

The constitutional organization of the court and its proceedure without a jury are therefore authoritatively settled by the tribunal of last resort.

Since the organization of the court to June 1, 1885, the whole number of cases against the United States has been 14,602, besides 397 against the District of Columbia, exclusive of cases transmitted under the recent Bowman Act, hereinafter mentioned. This large number of claims has been withdrawn from Congress and has been judicially disposed of. To that extent, therefore, the legislative branch of the Government has obtained relief from what are really and properly judicial duties.

In the first edition of this article it was said:

"There are still numerous claims pressing upon Congress wherein the petitioners appeal for special relief which the strict rules of law cannot afford them. Claims of this class are increasing and are a source of much embarrassment to both Senators and Representatives. It is uncertainty as to the real facts that gives rise to most of the difficulty. These, Congress, by its committees, cannot investigate and ascertain as they are proved and established in courts of justice. It may and probably will soon become necessary, if it has not already become so, to send such cases to the Court of Claims for findings of fact, to be submitted to Congress for its determination as to the law or the relief which should be applied to them. With the facts judicially determined, Congress would be able to act intelligently, safely, and readily upon the cases presented."

The next succeeding Congress acted upon the suggestion thus made, and finally passed the act of March 3, 1883,† commonly called the "Bowman Act," from Hon. S. Z. Bowman, a Representative from Massachusetts, who reported the bill from the Committee on Claims and had the charge of it in the House. It provides that when any claim *or matter* is pending before either House of Congress or any committee which involves the investigation and determination *of facts*, the same may be transmitted to the Court of Claims for hearing. When the facts are

* *McElrath's Case*, 102 U. S., 440.

† 22 Stat. L., 485, and 18 C. Cls. R., xxv.

found, the same are reported to the House or to the committee from which the case was transmitted, for its consideration. No judgment is entered, no conclusions of law made, and no opinion is given, nor is the evidence returned. All that is reported back is the findings of fact.*

The same act authorizes the head of any Executive Department to transmit to the court any claim or matter involving controverted questions of *fact or law*, requiring the court to find the facts and its conclusions of law, and to render an opinion; all of which is to be reported to the Department, *for its guidance and action.*

This act does not alter or affect the pre-existing judicial functions and jurisdiction of the court to hear, determine, and enter judgment in cases enumerated in Revised Statutes, § 1059. As no judgments are entered in cases under the Bowman Act, there is no right of appeal, as in other cases within the jurisdiction of the court.

As supplementary to the statutes conferring absolute jurisdiction upon the court to hear, determine, and give judgment in cases founded upon contracts, express or implied, the laws of Congress, the regulations of the Executive Departments, and cases referred by either House of Congress where legal rights are claimed, all of which are well defined judicial powers, the provisions of the Bowman Act, as aids to Congress and the Departments, perfect a complete system for the removal from the halls of legislation of all the troubles, vexation, and embarrassment incident to the consideration and disposition of private claims and demands of every kind against the Government which are not or cannot be settled in the ordinary processes of accounting, or otherwise, by the executive officers, in the exercise of their prescribed power and duties.

If parties have claims founded on contracts, laws, or regulations they can go to the court voluntarily with their petitions; if they have other legal rights, they may be referred there by either house of Congress under the general jurisdiction section. In all these cases the court determines the right of the parties judically and conclusively by its final decision, and Congress is never-more troubled with them.

In cases growing out of treaties with foreign nations or Indian tribes, not now within the jurisdiction of the court,† and

* *Ford's Case*, 19 C. Cls. R., 596.

† Rev. Stat., 1066.

other like cases, Congress may refer the matters in controversy by special acts, as it frequently has done, for final adjudication and judgment.

All other matters which address themselves particularly to the sound discretion and liberality of Congress, and seek special relief not as a legal right but as a concession by the law-making power, the determination of which cannot be delegated by legislators to others but must be passed upon by themselves, may be transmitted to the court under the Bowman Act, not for judicial determination and judgment, but for the finding of facts alone. When the facts are found, and clearly and concisely presented by the judges, it is not difficult for Congress to determine what measure of relief, if any, shall be accorded to the parties.

The system, now well established and matured during thirty years of practice and experience, of having all litigation against the Government tried before a bench of five judges, sitting together at the capital, has great and manifest advantage over that of scattering the cases all over the country, to be tried each before a single judge.

A great part of such litigation grows out of matter connected with the Executive Departments, where the documentary evidence is found. This fact is recognized and provided for in section 1076 of the Revised Statutes, which authorizes the court to call upon the Departments for information and papers, and such calls are constantly made. The practice and workings of all of the Departments are material for the judges to know and to become familiar with, in order correctly to understand and rightly to determine the issues involved.

Necessarily, five judges holding court in Washington and engaged constantly in the trial of such cases acquire a thorough knowledge of national legislation, national affairs, and the executive customs, practice, and course of business in all branches of the Government, which could not be expected of judges at a distance from the capital, who might occasionally have a case involving such matters.

Moreover, the trial of such cases before one court only insures uniformity of decisions, which is specially desirable as contributing to greater certainty in the administration of the law and greater security to all parties concerned.

Then, again, the whole business of defending the United States in suits at law, and in applications to Congress for

special relief, is brought together in the Department of Justice, under the immediate and special supervision of the Attorney-General and within easy access to the records, documents, and evidence in all the other Departments. It is there systematized, thoroughly investigated, carefully attended to, and never neglected. The able assistants employed devote their entire time to this one class of business, and thus become thoroughly conversant with all the ramifications of national litigation, and much better prepared for the defense of the United States than it would be possible for other counsel to become if the cases were distributed throughout the country, to be defended here and there by one of the sixty or seventy district attorneys, however able they may be.

By the act of June 25, 1868,* it was made the duty of the clerk to transmit to Congress, at the commencement of every December session, a full and complete statement of all the judgments rendered by the court for the previous year, stating the amount thereof and the parties in whose favor rendered, together with a brief synopsis of the nature of the claims upon which the judgments were rendered. This was merely for the information of Congress.

From these returns by the clerk the following table has been compiled, and it indicates the magnitude of the claims which the court has been called upon to investigate since 1867. As no such returns were made previous to that date, the amount of business transacted in the earlier years cannot be ascertained without considerable investigation, but it was no doubt about the same in proportion to that of subsequent years.

December term.	Aggregate claimed.	Aggregate recovered.
1867	$2,848,140 26	$810,628 38
1868	3,335,803 24	1,228,643 31
1869	6,073,163 55	953,597 27
1870	5,981,314 84	1,224,757 20
1871	3,716,724 69	2,354,852 18
1872	7,079,608 29	3,884,973 06
1873	6,274,157 41	2,418,510 85
1874	9,064,061 85	2,997,374 23
1875	6,065,513 53	1,138,678 58
1876	6,848,492 46	251,728 89
1877	3,622,624 34	256,267 31
1878	13,939,912 08	1,017,182 32
1879	1,681,732 80	331,332 86
1880	3,784,279 86	902,014 54
1881	4,241,011 39	854,354 50
1882	3,454,377 17	178,016 48
1883	3,017,721 82	468,998 13
1884	2,266,977 75	217,341 88
1885	3,614,783 96	339,603 36
	97,210,401 29	21,828,845 33

*Now Rev. Stat., § 1057.

This table includes only the amounts claimed and allowed in cases where judgments against the United States payable in money were the objects of the suits. It does not include the amounts claimed in cases under the Bowman Act nor in cases against the District of Columbia.

Nor does it embrace those actions in which other remedies were prayed for, such as the cases of Hale, Rector, and others *vs.* United States, in which the parties claimed the whole of the Hot Springs Reservation, in Arkansas. The title to the Hot Springs had been in controversy and litigation for fifty years. It had been before the Supreme Court several times without reaching a result. There were five adverse parties, each claiming the property as against each other, while the United States asserted title to the whole as remaining in the Government. The claimants had also been to Congress, and the General Land Office had been besieged by them and their attorneys. In 1870 Congress passed the Hot Springs Act, empowering the Court of Claims to sit as a court of equity and adjudicate the alleged titles both as between the Government and the claimants and between the adverse claimants themselves. After a long trial and laborious investigation, the Court of Claims disposed of all the litigants by a single decree, and the Supreme Court affirmed the judgment. The value of the property involved in this controversy was reputed to be more than six million dollars.*

By the act of March 17, 1866,† the clerk was required to transmit a copy of the decisions of the court to the heads of Departments; to the Solicitor, Comptrollers, and Auditors of the Treasury; to the Commissioners of the General Land Office and of Indian Affairs; to the chiefs of bureaus, and to other officers charged with adjusting claims against the United States, in order that the executive officers of the Government might have the benefit of the judicial opinions and decisions of the court as precedents to guide them in other like cases.‡

To carry into effect this provision in the manner most useful to those officers, and at the same time to afford persons dealing with the Government, and others interested, the means of ascertaining the rules of law applicable to contracts and obligations created by statute or otherwise on the part of the United States, and to present to Congress and the public the

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* 10 C. Cls. R., 289, 433; 11 C. Cls. R., 238; 92 U. S. R., 698.

† Now Rev. Stat., § 1057.

‡ *Meigs' Case*, 20 C. Cls. R., —.

whole business and operations of the court whenever they should be sought for, Judge Nott, in connection with the clerk, commenced in the year 1867 the regular publication of reports, under the title of "Court of Claims Reports." This publication has ever since been continued annually, until it now numbers twenty volumes. Although published by Government, these reports are also kept for sale by Mr. Wm. H. Morrison, the law bookseller of Washington, so that they may be had by persons interested who are not among the public officers to whom they are distributed by law.

Congress has always made ample provisions for the necessities and convenience of the court and of parties having business with it. The organic act made it the duty of the Speaker of the House of Representatives to appropriate such rooms in the Capitol at Washington for the use of the court as might be necessary for its accommodation, unless it should appear to the Speaker that such rooms could not be appropriated without interfering with the business of Congress; and in that event the court was authorized to procure in the city of Washington such rooms as might be necessary for the convenient transaction of its business.

In July, 1855, the court occupied the then Supreme Court room, now used for the Law Library of Congress, and remained there until the Supreme Court assembled in the autumn of that year, when it moved into the three rooms in the western projection of the main building of the Capitol. Thence it went into the six rooms in the west front of the basement of the north wing of the Capitol, then building, the roof not then having been put on. It was not until March 2, 1859, that any formal assignment, as contemplated by the act of Congress, was made, the unfinished condition of the work on the Capitol extension, then going on, having delayed it. On that day JAMES L. ORR, of South Carolina, Speaker of the House of Representatives, assigned to the court the rooms numbered 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 in the basement of the western projection of the main building. These twelve rooms thus assigned were six front and six inner rooms. Two of those in front were made into one for a court room, and it was occupied for that purpose until June, 1879. The wants of Congress for more room and greater convenience for committees having become apparent, the court surrendered at different times two of its front and two of its inner rooms. But in course of time more room was required to meet the increased and increasing necessities of Congress, and a pro-

vision was inserted in an act of July 1, 1879, making an appropriation for suitable and necessary rooms for the use and accommodation of the Court of Claims, which the Secretary of the Interior was authorized and directed to procure, and for arranging and furnishing as committee rooms for the use of the Senate and House the rooms in the Capitol occupied by the court.

In pursuance of this direction, the Secretary of the Interior provided the whole ground floor of the building on Pennsylvania avenue opposite the north front of the Treasury, all the upper stories of which had previously been occupied by the Department of Justice. Since then this building has been purchased by the United States, and is known as the Department of Justice Building. The premises are admirably adapted for the convenience of the court. There are six rooms, three on each side of the center wall. On one side is a room for attorneys, a large court-room, and the chambers of the court, or room for hearing motions and doing other chamber business. On the other side of the partition is the spacious clerk's office, in the rear the conference room of the judges, and an intermediate room, with safes for the preservation of the most important and valuable papers. These rooms were taken possession of by the court in November, 1879.*

The court has an excellent library of law books, which have been collected from time to time since its organization, and for the increase of which Congress appropriated twenty-five hundred dollars in June, 1880. Besides, the judges and attorneys practicing in the court have the benefit of the library of the Department of Justice, in the upper story of the same building.

The names of the judges who have been appointed and held office are as follows:

JOHN J. GILCHRIST, of New Hampshire; appointed March 3, 1855; died April, 1858. At the time of his appointment he was holding the highest judicial office in his State, by a tenure of good behavior, terminable at the age of seventy years—that of chief justice of the Superior Court of Judicature—resigning to accept this position tendered him by President Pierce.

ISAAC BLACKFORD, of Indiana; appointed March 3, 1855; died December 31, 1859. He had been a judge of the Supreme Court of Indiana and reporter of its decisions for more than thirty-five years.

* 14 C. Cls., 1.

GEORGE P. SCARBURGH, of Virginia; appointed May 8, 1855; resigned April, 1861. He was a lawyer of eminence in his State.

EDWARD G. LORING, of Massachusetts. Appointed May 6, 1858, resigned in December, 1877, having passed the age of seventy years. Previous to his appointment he had been a judge in his State for many years.

JAMES HUGHES, of Indiana. Appointed January 20, 1860, and resigned in February, 1865. He had been a circuit judge in his State, professor of law in the University of Indiana, and a member of Congress.

JOSEPH CASEY, of Pennsylvania. Appointed judge May 23, 1861, and on the reorganization of the court by which the number of the judges was increased to five, one of whom was to be the chief justice, he was appointed the first Chief Justice of the court, March 13, 1863. Resigned in November, 1870. He had been reporter of the supreme court of his State and a member of Congress.

DAVID WILMOT, of Pennsylvania. Appointed March 7, 1863, and died in office March, 1868. He had been a State judge, and was for some time a Representative in Congress and a Senator of the United States.

EBENEZER PECK, of Illinois. Appointed March 10, 1863, and, having passed the age of seventy years, he resigned in 1878. At the time of his appointment he was reporter of the Supreme Court of Illinois, and had held that position for sixteen years.

CHARLES C. NOTT, of New York. Appointed February 22, 1865. He had been engaged in the active practice of the law in the city of New York, where he was for several years Commissioner of Loans. Author of the standard work on Mechanics' Liens.

SAMUEL MILLIGAN, of Tennessee. Appointed July 25, 1868, and died in office in April, 1874. He was a judge of the Supreme Court of Tennessee when called to this bench, and had previously been appointed by President Lincoln a judge of the United States Court for the Territory of Nebraska.

CHARLES D. DRAKE, of Missouri. Appointed Chief Justice December 12, 1870, while representing the State of Missouri in the Senate of the United States, which position he resigned to accept the chief justiceship. He is the author of the well-known standard work on Attachment. Resigned January 12, 1885, in the seventy-fourth year of his age.

WILLIAM A. RICHARDSON, of Massachusetts, appointed judge June 2, 1874, Chief Justice January 20, 1885. He was

judge of probate, and judge of probate and insolvency in his State, in all more than sixteen years; was one of the commissioners who revised the General Statutes of the State, A. D. 1860, and one of the commissioners to edit the same and the second edition of 1873; and one of the editors for twenty-two years of the annual statutes supplementary thereto. At the time of his appointment to this court he was Secretary of the Treasury of the United States. By authority of an act of Congress* he prepared and edited the Supplement to the Revised Statutes of the United States, A. D. 1881.

J. C. BANCROFT DAVIS, of New York, appointed December 14, 1877. Besides the practice of the law in New York City he had been much in the service of the Government, having been secretary of legation at London; Assistant Secretary of State; secretary of the joint high commission which concluded the treaty of Washington; agent for the United States before the tribunal of arbitration, at Geneva, on the Alabama claims, and envoy extraordinary and minister plenipotentiary to the German Empire. Resigned December 9, 1881, to accept the office of First Assistant Secretary of State. Was reappointed December 20, 1882. Resigned in November, 1883, upon being appointed Reporter of the Supreme Court of the United States.

WILLIAM H. HUNT, of New Orleans, who had long been one of the leaders of the bar there, was appointed May 15, 1878, and resigned in March, 1881, on being appointed Secretary of the Navy in the cabinet of President Garfield.

GLENNI W. SCOFIELD, of Pennsylvania, appointed May 20, 1881. He had been a judge in that State, and many years a Representative in Congress, and at the time of his appointment was Register of the Treasury of the United States.

LAWRENCE WELDON, of Illinois, appointed November 24, 1883. He had been twenty-five years in the extensive practice of the law, and had served as United States district attorney for the southern district of Illinois during the administration of President Lincoln and part of that of President Johnson.

JOHN DAVIS, of the District of Columbia, appointed January 20, 1885. He had practiced law in New York City and in the District of Columbia, and was assistant counsel for the United States before the French-American Claims Commission. He had been in the diplomatic service of the United States in different positions and at the time of his appointment was First Assistant Secretary of State.

*Act of June 7, 1880. 21 Stat. L., 308.

JURISDICTION.

The organic act of 1855 gave to the court jurisdiction to hear and determine "all claims founded upon any law of Congress or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government of the United States, and all claims which may be referred to it by either House of Congress."*

That jurisdiction continues to the present time, except as it is affected by a statute of limitations inserted in the act of March 3, 1863,† by which it was provided that "every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement of the claim be filed in the court or transmitted to it under the provisions of this act within six years after the claim first accrues"; saving the right upon claims then already accrued to file the petition within three years after the passage of the act, and also the rights of certain persons under disability.

The consequence of this limitation is that claimants now go to Congress with their petitions for redress in matters of claims to which this exclusion from the Court of Claims applies, and in some special cases Congress has waived the statute in their behalf.

The same act of 1863 gave to the court jurisdiction of "all set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatever on the part of the government against any person making claims against the Government in said court." Under this provision the United States have obtained judgment against individuals in several cases, and in certain railroad cases they have recovered more than a million of dollars.

By the act of May 9, 1866,* the jurisdiction was extended "to hear and determine the claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for relief from responsibility on account of losses, by capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, and papers in his charge, and for which such officer

*Now Rev. Stat., § 1,059.
†Now Rev. Stat., § 1,069.

was and is held responsible;" with authority to enter a decree for his relief, to be certified to and allowed by the accounting officers of the Treasury as a credit whenever the court "ascertained the facts of any such loss to have been without fault or neglect on the part of any such officer."

The jurisdiction of the court was further extended by the act of June 25, 1868,* so as to authorize the head of any Executive Department, or the Secretary of the Treasury, on the certificate of any Auditor or Comptroller, to transmit to the court for hearing and adjudication any claim belonging to one of the classes of which the court might take jurisdiction, on the voluntary action of the claimant, "whenever the same involves disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount in controversy in the particular case; or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States."

It has been decided by the Supreme Court that the six years' limitation imposed by the statute in other cases does not apply in this court to cases thus referred, where the claimant had presented his claim to the Department within six years after it had accrued.†

Aliens, who are citizens or subjects of any Government which accords to citizens of the United States the right to prosecute claims against such Government in its courts, have the privilege of prosecuting claims against the United States in the Court of Claims, whereof the court, by reason of their subject-matter and character, might take jurisdiction. It has been judicially determined by decisions already made, that under this provision the right to sue in this court is accorded to citizens of Prussia, Hanover, Bavaria, Switzerland, the Netherlands, the Hanseatic Provinces, the free city of Hamburg, Spain, Belgium, Italy, and Great Britain, and it no doubt belongs to the citizens of other countries.

The jurisdiction of the court is restricted as to certain claims for or in respect to which the claimants have pending in other

* Now Rev. Stat., § 1,063.

† *Lippitt's Case*, 100 U. S. R., 663, and *Green's Case* 18 C. Cls., 93.

courts suits against persons who at the time the causes of action occurred were acting, or professing to act, under the authority of the United States, and certain claims growing out of treaties.

These provisions confer the general, continuing, and permanent jurisdiction of the court. They may be found, with their incidental regulations and details, in chapter 21 of the Revised Statutes of the United States, §§ 1059–1093.

But Congress has, from time to time, given to the court jurisdiction, for a limited period, in particular classes of cases, and has, by special acts, referred many single claims to the court for adjudication.

By the act of March 12, 1863,* entitled "An act to provide for the collection of abandoned and captured property, and for the prevention of frauds in insurrectionary districts within the United States," the Secretary of the Treasury was authorized to appoint agents to receive and collect all abandoned or captured property in any State or Territory, or any portion of any State or Territory, of the United States designated as insurrectionary against the lawful Government of the United States by proclamation of the President of July 1, 1862. The property collected was required to be appropriated to public use, or sold, and the proceeds paid into the Treasury of the United States.

The third section of the act provided that "any person claiming to have been the owner of any such abandoned or captured property, may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof, in the Court of Claims, and on proof to the satisfaction of said court of his ownership of said property, of his right to the proceeds thereof, and that he has never given aid or comfort to the present rebellion, to receive the residue of such proceeds, after the deduction of any purchase-money which may have been paid, together with the expense of transportation and sale of said property, and any other lawful expenses attending the disposition thereof."

It was decided by the Supreme Court that, in accordance with the President's proclamation, the suppression of the rebellion must be recognized as having taken effect on the 2d of April, 1866, in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Mississippi, Tennessee, Alabama, Louisiana, and Arkansas, and on the 20th of August, 1866, "throughout the whole of the United States." The right to file

* 12 Stat. L., 820.

petitions under this act therefore expired on the 20th of August, 1868.

The Supreme Court decided, in 1871, that the President's proclamation of December 25, 1868, granting "unconditionally and without reservation to all and every person who directly or indirectly participated in the late insurrection or rebellion a full pardon and amnesty for the offense of treason against the United States, &c., with restoration of all rights, privileges, and immunities under the Constitution and laws which have been made in pursuance thereof," enabled claimants under this act to recover in the Court of Claims without proof or allegation in their petitions that they never gave aid or comfort to the rebellion.*

This decision having been made after the time for bringing actions allowed by the act, it came too late for those who had previously been deterred from presenting their petitions by reason of their participation in the rebellion.

The court has disposed of all the cases filed under this act, though many of them were dismissed because presented after the time limited in the act had expired. The whole number of cases was 1,578, and the whole amount demanded, according to the petitions, was $77,585,962.10. The amount actually recovered by the claimants and paid out of the Treasury on judgments rendered was $9,833,423.16. The balance of money arising from captured and abandoned property still in the Treasury is $10,512,007.96.†

By the act of June 16, 1880, Congress gave to this court jurisdiction of certain claims against the District of Columbia, limiting parties to six months from the passage of the act in which to file their petitions. Under this authority 394 cases have been instituted, all of which but 39 have been disposed of. The amount claimed in all the cases was about six and a half million dollars, and the amount recovered by claimants is about $400,000. The District has had judgment in its favor in many cases upon set-off and counter-claims.

In 1873, by special act, Congress granted jurisdiction to the Court of Claims to hear and determine the case of the city of Carondelet, brought to recover against the United States the value of a tract of land of about 1,700 acres, formerly a military reservation, and near which had grown up the settle-

**Armstrong & Pargoud's Cases*, 7 C. Cls. R., 280, 289, & 13 Wall., 154, 156.
†*Hodges' Case*, 18 C. Cls. R., 700.

ment, village, and city of Carondelet, subsequently merged in the city of Saint Louis. The court held that the title was in the United States, and its decision was affirmed by the Supreme Court on appeal.*

Several cases have been referred to the court by Congress in which the owners of vessels claimed damages on account of collisions with vessels of the Navy of the United States, occurring, as alleged, by reason of the fault and negligence of the naval officers in command of the latter.

In 1873, and previously, there arose a controversy between the United States and the Pacific Railroad Companies as to the right of the former to withhold payment for freight and transportation for the Government until those companies had reimbursed the United States for interest paid on the bonds issued for the aid and benefit of the companies, which were made payable in thirty years; the companies claiming that the interest paid by the United States was not to be reimbursed until the maturity of the bonds. There were some other questions also involved.

A section in the appropriation act of March 3, 1873, provided that the Secretary of the Treasury should withhold all payments to said companies, but giving the companies the right to bring suit in the Court of Claims therefor. Actions were brought, and were prosecuted and defended with great ability; the Attorney-General himself appearing for the Government, and Mr. Sidney Bartlett, of Boston, and Mr. E. W. Stoughton, of New York, for the claimants. In the first or leading case judgment was rendered for the claimants, and on appeal to the Supreme Court the rulings of the Court of Claims were affirmed. In a subsequent case some changes were made by the Supreme Court in the method of computing the amount allowed.

Other cases have since been tried between the Government and the railroad companies, with equally distinguished counsel, and judgments have been rendered for several million dollars. In the latest case, the court awarded to the United States on counter-claims $4,487,807.39, and to the company on its demands $2,910,124.08, and gave judgment in favor of the Government for the difference, $1,577,683.31.

Many questions of law and fact of much intricacy and great difficulty were involved in these controversies.

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*9 C. Cls. R., 456; 11 C. Cls. R., 367; and 92 U. S. R., 462.

So in 1874 and 1875 Congress prohibited the payment of any money from the public Treasury for the transportation of any property or troops of the United States, or of any officers of the Army traveling under military orders, over any railroad which, in whole or part, was constructed by the aid of a grant of public land on condition that such railroad should be a public highway for the use of the Government free of toll or other charge, or upon any other conditions for the use of such road for such transportation, reserving the right to the companies to bring suit in the Court of Claims, and recovering for the same if found entitled thereto by virtue of the laws in force prior to the passage of the act of prohibition, and waving the statute of limitation. In pursuance of this provision suits were brought, and the rights of the United States and of the railroad companies under the land-grant acts were adjudicated and settled, and Congress was relieved from further trouble in the matter.

For many years there was pending in Congress a claim of the trustees of Albert G. Sloo for carrying the mail between New York and Chagres and New Orleans and Chagres, in addition to the regular service required under a contract made in 1847. "Application was persistently made," say the Supreme Court, "to Congress for an equitable allowance, but for some reason or other the subject was always postponed or delayed, until finally, on the 14th of July, 1870, Congress passed an act "referring the case to the Court of Claims." The case involved the rights of the parties and the liabilities of the Government growing out of correspondence with the Postmaster-General at the time the service was performed, and the amount in controversy was more than a million dollars. The case was tried before four judges of the Court of Claims, and they were equally divided upon the question of the liability of the United States. A *pro forma* judgment was entered for the defendants, and the case was taken to the Supreme Court on appeal. A majority of that court held the United States liable, and a mandate was issued accordingly and judgment entered thereon for the claimants for $1,031,000, three judges of the Supreme Court dissenting.

By the act of June 19, 1878, Congress authorized any persons or body corporate holding or making any claim upon the balance of the fund usually designated and known as "the Chinese indemnity fund," under the control of the Department of State of the United States, for loss sustained by the plunder and destruction, in the year 1854, of the bark Caldera, and property on

board of said vessel, at any time within twelve months after the passage of the act to commence proceedings in the Court of Claims, and conferred jurisdiction on the court to hear and determine such claims "according to principles of justice and international law." Suits were brought and thoroughly and exhaustively tried by able counsel. The Court of Claims gave judgment for the claimants, two of the five judges dissenting. On appeal, the judges of the Supreme Court were equally divided in opinion, and the judgment was affirmed for that reason.

In this connection it may be mentioned that another case of an earlier date, La Peyre v. The United States, even more singularly divided the two courts. The question involved was the novel one, whether a proclamation of the Executive takes effect from the day of its date or from the time of its promulgation, In the Court of Claims the point was argued before four judges, a reargument was ordered, and the court then stood equally divided, judgment *pro forma* being given against the claimant. In the Supreme Court the point was again argued, a reargument was likewise ordered, and the court then stood five for reversal and four for affirmance, with one of the majority merely concurring in the judgment.

On the 3d of March, 1881, Congress passed an act which authorized the Court of Claims to take jurisdiction of and try all questions of difference arising out of treaty stipulations with the Choctaw Nation and to render judgment thereon, with power to review the entire question of differences *de novo*, without being estopped by any action had or award made by the Senate of the United States in pursuance of the treaty of 1855. These "questions of difference" grew out of treaties made in 1820, 1825, 1830, 1855, and 1856. They had been in controversy in Congress and the Departments for many years, and involved a claim of more than fifteen millions of dollars. Suit has been instituted, and the printed record of the case covers more than three thousand printed pages. It has not yet been brought to a termination.

By act of March 3, 1883, Congress authorized the Eastern band of Cherokee Indians to bring a suit in equity against the United States, as trustees, and the Cherokee Nation, to determine the claim of the former to a share of certain funds held in trust for the Cherokees. The case involved the construction of numerous treaties and statutes, and made necessary a care-

ful examination of the whole history of the Cherokee Indians since 1783. After a long trial the case was disposed of by a decree in favor of the Cherokee Nation.*

Numerous other important cases specially referred to the court might be cited, but a sufficient number has been mentioned to convey a correct idea of its jurisdiction, and to show the magnitude and intricacies of its business, as well as the relief which is afforded to Congress by removing such controversies from the halls of legislation.

The referring of peculiar cases to the court by special acts of Congress seems to be on the increase at each succeeding session.

The most recent act is that of January 20, 1885, referring the French Spoliation Claims, "arising out of illegal captures, detentions, seizures, condemnations, and confiscations, prior to the ratification of the convention between the United States and the French Republic concluded on the thirtieth of September, eighteen hundred." The time for presenting such claims is limited to two years from the passage of the act. The court is to find the facts and the law in each case and report the same to Congress.†

PRACTICE.

All cases are tried in the Court of Claims with the same formalities as are cases between individual litigants in the courts of common law as to the admissibility of evidence, the examination and cross-examination of witnesses, and the application of legal principles, and the rights of the United States and of claimants are guarded and protected by the established rules of law as administered in other courts.

The procedure and practice have been improved and simplified by Congressional enactments, and by the rules adopted by the court from time to time, as suggested in the course of its experience of more than thirty years, until a system has grown up and become established of the utmost convenience to parties and counsel, wherever they may reside.

Claimants must file petitions properly setting out their cases, and must prove their claims by competent evidence. But as the court is held at Washington, and has jurisdiction of cases

* *Eastern Band of Cherokee Indians* v. *The United States et al.*, 20 C. Cls. R., —.
† 23 Stat. L.

which arise in distant and different parts of the country, Congress has provided that "the testimony shall be taken in the county where the witness resides, when the same can conveniently be done."*

When, therefore, a claimant had filed his petition, which he may do by sending it to the clerk of the court by mail or otherwise, he may, at his leisure and convenience, go on taking the depositions of witnesses whenever and wherever he can find them, first giving notice to the Attorney-General that he may be present himself, or by an assistant, to cross-examine them.

The court is authorized by law to call upon any of the Departments for any information or papers it may deem necessary, and it always does so in proper cases on motion of claimants; and thus they can readily obtain whatever information and evidence affecting the issues involved are contained in the archives of the Government.†

Parties filing petitions, pleadings, and motions, except motions for calls on the Departments, are required by the rules to leave with the clerk at the same time written notice thereof, addressed to the attorney of the adverse party, with postage prepaid, and the clerk is required to mail the same, and to note the fact on the general docket; and all notices may be served in the same manner. Printed blanks are furnished to parties for this purpose. Upon the receipt by the clerk of an answer to a call upon a Department, he is required also to notify the claimant's counsel and Attorney-General of the fact by mail. By these rules, attorneys in any place, however distant from Washington, are informed at once, and therefore always know of every paper filed in their cases without being obliged to watch the state of the clerk's docket.

When the claimant has closed his proof, he may give notice to the Attorney-General to that effect, by an entry in the notice book, in the clerk's office. In two months thereafter, unless the Attorney-General asks for further time, the claimant may have his case placed on the trial list.

Before a case is placed on the trial list, however, the claimant must file in the clerk's office twenty-five printed copies of his brief and his proposed findings of fact, and the Attorney-General has one month thereafter in which to file a brief and request for findings of fact on his part.

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* Rev. Stat., § 1081. † Rev. Stat., § 1076.

If counsel live at a distance, the court will, on application, assign a day certain for the hearing of his case, so that he need not be detained, as he may be in other courts, awaiting his turn; or he may file his request for findings of facts, briefs, and argument by forwarding them to the clerk by mail, and thus he may be relieved from going to Washington at all during the progress of the case, from beginning to end of the proceedings.

No fees or costs are taxed or allowed by the court, and if the claimant loses his case he is not subjected to a bill of cost, except that a statute requires the losing party to pay the cost of printing the records.* Of course, a party must pay for the taking of the depositions which he himself requires in establishing his claims, but if defeated he is not required to pay for taking the depositions of his adversary.

The evidence is printed at the Government Printing Office, and that and all other documents in each case are made into records for the use of the court and the parties.

The court has no jury. All questions of law and of fact are submitted to the five judges, and each judge reads over the whole record, so that there is not the same necessity for oral arguments as in the common law courts.

There is a provision still standing in the Revised Statutes,† in terms applying to all cases in the court, requiring claimants to set forth in their petitions, and to prove affirmatively, that they have at all times borne true faith and allegiance to the Government and have not voluntarily aided, abetted, or given encouragement to rebellion. Since the decision of the Supreme Court in relation to a similar clause in the captured and abandoned property act, which has been hereinbefore referred to, declaring the constitutional effect of the proclamation of general pardon and amnesty issued by the President in December, 1868, to be the relief of all persons from such a restriction upon their rights, the practice has been not to require an allegation of loyalty in the petition or proof of it at the trial.‡

But this relief does not apply to cases in which loyalty is required to be proved under section 4 of the Bowman Act.

The defense of all claims is confided by law to the Attorney-General, who assigns one of the Assistant Attorneys-General, with an adequate number of assistants, to that special duty,

*Act of March 31, 1877. Supplement to Rev. Stat., 288, and 18 Stat. L., 344.
† Rev. Stat., § 1072.
‡ *Armstrong and Pargoud Cases*, 7 C. Cls. R., 280, 289; 13 Wall., 154, 156.

under his own supervision, but he occasionally makes the argument himself in cases of unusual importance and magnitude. The rights and interests of the United States are therefore ably and amply protected. Indeed, in two particulars the United States are greatly favored in their defenses by provisions of law which do not apply in any other courts. No claimant, nor any persons from or through whom any such claimant derives his alleged title, claim, or right, nor any person interested in any such title, claim, or right, is a competent witness in supporting the same, while all such persons may be witnesses to defeat them. Cases against the District of Columbia and some cases specially referred to the court are expressly exempted by law from this provision.

At any time within two years next after the final disposition of any claim, on motion made in behalf of the United States, the court may grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; and this may be done while an appeal is pending in the Supreme Court, or after the judgment has been affirmed by that court, or even after it has been paid at the Treasury. But new trials on motion of claimants can only be granted for the same reasons which, by the rules of common law or chancery, in suits between individuals, would furnish sufficient ground for new trials, and every such motion must be made at the term in which judgment is rendered and before the commencement of the summer vacation.

Moreover, it is expressly provided by statute that any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or any part of any claim, shall, *ipso facto*, forfeit the same to the Government; and it is made the duty of the court, in such cases, to find specifically that such fraud was practiced or attempted, and to give judgment that the claim is forfeited, and that the claimant be forever barred from prosecuting the same.

The first appeal case which went to the Supreme Court was sent up with a full copy of the whole record, evidence and all, just as all cases had been previously reported to Congress under the former law. But that case was dismissed for want of jurisdiction in that court to hear appeals from the Court of Claims, by reason of the section which gave a revisory power to the Sec-

retary of the Treasury to review its judgments, as has been already stated. When that section was repealed, and the Supreme Court sustained the appellate jurisdiction conferred by other provisions of the act, they foresaw that with the whole records sent up they would encounter the same difficulty which Congress had experienced—the utter impossibility of devoting sufficient time to the consideration of such a mass of evidence, and of undertaking to review the findings of fact thereon. Therefore, in the year 1866, under the act of March 3, 1863, they wisely made rules requiring the Court of Claims to find the facts, and confining the hearing on appeal to the questions of law raised thereon. These rules, as subsequently modified, now stand as follows:

"In all cases hereafter decided in the Court of Claims, in which, by the act of Congress, such appeals are allowable, they shall be heard in the Supreme Court upon the following record, and none other:

"1. A transcript of the pleadings in the case, of the final judgment or decree of the court, and of such interlocutory orders, rulings, judgments, and decrees as may be necessary to a proper review of the case.

"2. A finding by the Court of Claims of the facts in the case, established by the evidence, in the nature of a special verdict, but not the evidence establishing them; and a separate statement of the conclusions of law upon said facts on which the court founds its judgment or decree. The finding of facts and conclusions of law to be certified to this court as part of the record.

"3. In all cases an order of allowance of appeal by the Court of Claims, or the Chief Justice thereof in vacation, is essential, and the limitation of time for granting such appeal shall cease to run from the time an application is made for the allowance of appeal.

"4. In all cases in which either party is entitled to appeal to the Supreme Court, the Court of Claims shall make and file their findings of facts and their conclusions of law therein, in open court, before or at the time they enter judgment in the case.

"5. In every such case, each party, at such time before trial and in such form as the court may prescribe, shall submit to it a request to find all the facts which the party considers proven

and deems material to the due presentation of the case in the findings of fact."

The practice now is for the Court of Claims, after hearing or reading, as the case may be, the arguments of counsel on both sides, and after each judge has thoroughly read over the whole record by himself, and considered the requests of the opposite parties, to draw up findings of fact.* It is easy to see that the duties of the judges in this respect, and in coming to an agreement on each one of the facts which are considered material, often very numerous, as well as in reducing to concise written statements the facts agreed upon by them, are laborious, difficult, and perplexing. But all that has to be done, and is done. Upon the findings of fact thus drawn up the court applies the law, delivers opinions, and enters judgments in accordance therewith. The concurrence of three judges is made necessary by statute to the rendition of any judgment.

If judgment is against a claimant in any case where the amount in controversy exceeds three thousand dollars, he may, within ninety days thereafter, appeal to the Supreme Court on the law. The United States may appeal in like manner from any judgment adverse to the Government, without reference to the amount in controversy. Before the passage of the Revised Statutes the United States could not appeal in cases involving less than three thousand dollars, unless the Chief Justice certified that the judgment or decree would affect a class of cases, or furnish a precedent for the future action of an Executive Department of the Government in the adjustment of such class of cases, or a constitutional question. But this restriction on the right of appeal by the defendants was omitted from the Revised Statutes, apparently by mistake, and since then several appeals have been taken on the part of the United States in cases involving small amounts, without such certificate, although probably they did, in fact, belong to a class of cases pending in the Departments.

There are other provisions in the law and the rules of the court in relation to the details of practice, which do not require particular mention here.

Printed copies of the Rules, as well as of the laws of Congress relating to the court, may be had by members of the bar of the court, on application to the clerk, and from them all neces-

* *Union Pacific Railway Motion*, 20 C. Cls., —.

sary information may be obtained as to instituting and conducting suits against the United States.

CONCLUSION.

In bringing this article to a close, the following remarks in relation to the court made by the late HON. CHARLES O'CONOR, the well-known and eminent lawyer of New York, in an argument reported in full in a volume recently published by Baker, Voorhis & Co., of New York City, entitled "Great Speeches by Great Lawyers," seem peculiarly appropriate:

"The court itself is the first-born of a new judicial era. As a judicial tribunal, it is not only new in the instance; it is also new in principle. So far as concerns the power of courts to afford redress, it has heretofore been fundamental that the sovereign can do no wrong. This court was erected as a practical negative upon that vicious maxim. Henceforth our Government repudiates the arrogant assumption, and consents to meet at the bar of enlightened justice every rightful claimant, how lowly soever his condition may be.

"Prior to the institution of this court, all rights as against the nation were imperfect in the legal sense of the term; every duty of the nation was a duty of imperfect obligation. There was no judicial power capable of declaring either; no private person possessed the means of enforcing the one or coercing the other. But effectual progress has been made towards giving form and method to the administration of justice between the nation and the individual. This court enables the latter to obtain an authoritative recognition of his rights. No more is needed; for in no case can a state, after such a recognition, withhold payment and yet retain its place in the great family of civilized nations.

"The ordinary jurisdiction of the court bears a strong resemblance to the narrow cognizance at common law; but its extraordinary jurisdiction over all claims which may be referred to it by either house of Congress extends its power to the utmost limits attainable by juridical science in its fullest development. In this aspect, its dignity and importance as a governmental institution cannot be too highly appreciated. As a means by which rightful claims against the government may be readily established, and those not founded in justice promptly driven from the portals of Congress, it must exercise a most healthful influence.

"But we are authorized to look higher than the mere convenience of suitors and the dispatch of public business. Enlightened patriotism will contemplate other and more important consequences. Caprice can no longer control. Here equity, morality, honor, and good conscience must be practically applied to the determination of claims, and the actual authority of these principles over governmental action ascertained, declared, and illustrated in permanent and abiding forms. As step by step, in successive decisions, you shall have ascertained the duties of government toward the citizen, fixed their precise limits upon sound principles, and armed the claimant with means of securing their enforcement, a code will grow up giving effect to many rights not heretofore practically acknowledged.

"In it will be found enshrined for the admiration of succeeding ages an honorable portraiture of our national morality, and a full vindication of the eulogium recently pronounced upon our people by the highest authority in the parent state. 'Jurisprudence,' says Lord Campbell, in the Queen *vs.* Millis, 'is the department of human knowledge to which our brothers in the United States of America have chiefly devoted themselves, and in which they have chiefly excelled.'"

WASHINGTON, D. C., *June*, 1885.